

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

7 THE 24-7 GROUP OF COMPANIES, INC.,)
8 a Nevada corporation,)
9 Plaintiff,)
10 vs.)
11 TERRY ROBERTS, an individual;)
12 MELANIE ROBERTS, an individual; and)
13 WELL'S FARGO BANK, N.A., etc.,)
14 Defendants.)

3:13-cv-00211-MMD-WGC

**ORDER DENYING
DEMAND TO VOID MOTION AND
RELATED ORDER DUE TO
FRAUD UPON THE COURT**

(re: Doc. # 40)

14 Before the court is the Demand to Void Motion and Related Order Due to Fraud Upon the Court
15 filed by Plaintiff, The 24-7 Group of Companies, Inc. ("24-7"). (Doc. # 40).¹ This motion arises from
16 a motion to withdraw as counsel of record filed by Plaintiff's former attorney Phillip M. Stone, Esq.
17 (Doc. # 36.) The court will review the history of this motion, commencing with a predecessor motion
18 to withdraw.

19 On February 20, 2014, then counsel of record Del Hardy, Esq., and Stephanie Rice, Esq., made
20 a motion to withdraw further representation of Plaintiff 24-7. (Doc. # 21.) In that motion, attorneys
21 Hardy and Rice represented to the court that they had a "fundamental disagreement" with actions 24-7's
22 chairman Rune Kraft insisted the lawfirm undertake. (*Id.* at 6, ¶ 3.) Counsel represented that the
23 relationship between Plaintiff and the lawfirm "has deteriorated to the point where counsel can no longer
24 represent Plaintiff effectively and adequately." (*Id.* at 6, ¶ 6.) Counsel referenced Rule 1.16 of the Nevada
25 Rules of Professional Conduct which states an attorney "shall withdraw from the representation of a
26 client if * * * (4) A client insists upon taking actions that the lawyer considers repugnant or with which
27 the lawyer has fundamental disagreement... ."

¹ Refers to court's docket number.

1 The motion of the Hardy law group was granted (Doc. # 23) and Plaintiff 24-7 was directed to
2 secure replacement counsel. Thereafter, Plaintiff 24-7 filed a "request to vacate" the court's decision. The
3 court scheduled a hearing to address 24-7's request to vacate. (Doc. # 26.) The court commenced the
4 hearing with a discussion of Ninth Circuit authority which requires a corporation to appear in federal
5 court only through a licensed attorney. *United States v. High Country Broad Co.*, 3 F.3d 1244, 1245 (9th
6 Cir. 1993); *In re America W. Airlines*, 40 F.3d 1058, 1059 (9th Cir. 1994) (per curiam). The court also
7 allowed participation by attorney Stephen Dokken who stated he was not representing the corporation
8 but that he was only participating to assist Mr. Kraft because he (attorney Dokken) has been Mr. Kraft's
9 personal attorney for many years.

10 The court heard competing statements from Mr. Kraft and Mr. Hardy regarding the Hardy Law
11 Group's submission to the court that there is a fundamental disagreement between the law firm and the
12 corporation as how the case should be prosecuted. While the court recognized that Mr Kraft took
13 exception with the assertion that there was a fundamental disagreement between 24-7 and the Hardy Law
14 Group, the court expressed its opinion that counsel identified legitimate grounds for withdrawal and that
15 the court "should not impose upon the lawfirm the representation of a client with whom it has such a
16 disagreement. (Doc. # 30 at 2.)

17 The 23-7 request to vacate was denied and the parties were advised of the authority to file
18 objections to the magistrate judge's order within fourteen days. (Doc. # 30.) No objection was filed. The
19 court ordered 24-7 to procure replacement counsel not later than 30 days thereafter. (*Id.*, 30 at 3.) The
20 court granted 24-7's request for an extension of time (Doc. # 32) and afforded it until May 9, 2014, to
21 retain replacement counsel. (Doc. # 33.)

22 On May 9, 2014, attorney Phillip M. Stone entered an appearance on behalf of 24-7. (Doc. # 35.)
23 Thereafter Mr. Stone filed a motion for leave to withdraw as counsel of record, stating that "a situation
24 has arisen between the 24-7 Group's representative, Rune Kraft, and Mr. Stone which has rendered
25 continued representation of the 24-7 Group by Mr. Stone unreasonably difficult." Mr. Stone further
26 advised the court that "the attorney-client relationship has deteriorated and Mr. Stone can no longer
27 effectively and adequately represent the 24-7 Group in the above entitled action." (Doc. # 36 at 3.)
28 Mr. Stone informed the court that, pursuant to the engagement agreement, he notified the 24-7 Group

1 in writing that he had "no alternative but to withdraw from representing the 24-7 Group in this matter."
 2 Mr. Stone indicated he (attorney Stone) has not been informed whether new counsel had been retained
 3 by 24-7 as of the date of the motion to withdraw filed by attorney Stone. (*Id.*)

4 On July 15, 2014, with no opposition having been filed, the court found good cause to grant the
 5 motion to withdraw of attorney Stone and entered an order to that effect. The court also directed 24-7
 6 to secure replacement counsel as a corporation may only appear in federal court through a licensed
 7 attorney. *High Country Broad. Co. and In re America W. Airlines, supra.* (Doc. # 37.)

8 On August 20, 2014, the court received a "request to vacate" by 24-7. (Doc. # 38.) 24-7's
 9 chairman, Rune Kraft, stated that although he received a letter from attorney Stone advising the Stone
 10 motion to withdraw had been granted, neither the order or the underlying motion was ever received by
 11 the company. (*Id.* at 5.) The request to vacate did not address the substantive issue of whether attorney
 12 Stone should be allowed to withdraw, i.e., whether Mr. Kraft had "repeatedly taken actions with had
 13 rendered continued representation unreasonably difficult" or that as Mr. Stone represented in the motion,
 14 he "can no longer effectively and adequately represent The 24-7 Group in the above entitled action."
 15 (Doc. # 36 at 3, 5.)

16 Addressing 24-7's request to vacate, the court noted that attorney Stone's motion contained a
 17 certificate of service which included Kraft and 24-7 as addressees. However, even if the motion had not
 18 been received, the court advised in its order denying the request to vacate, that it the court is not inclined
 19 to vacate the decision allowing Mr. Stone to withdraw. The clerk was nevertheless directed to mail a
 20 copy of the court's order (Doc. # 39), counsel's motion (Doc. # 36) and the court's order granting the
 21 motion to withdraw (Doc. # 37) to Kraft/24-7.

22 Although the court's order allowing attorney Stone to withdraw directed 24-7 to procure
 23 replacement counsel within thirty days of the date of that order, the court advised it would conduct a
 24 show cause hearing on September 5, 2014, to consider whether a report and recommendation should be
 25 entered recommending dismissal of the action for failure of the corporation to obtain substitute counsel.
 26 (Doc. # 39 at 2.)

27 Thereafter, Mr. Kraft on behalf of 24-7 filed a "Demand" to void the underlying motion to
 28 withdraw as purportedly representing "a product of fraud upon the court." (Doc. # 40 at 2.) Plaintiff 24-7

1 again asserted it had not received the motion to withdraw. However, the 24-7 Demand (Doc. # 40), like
 2 the Request to Vacate (Doc. # 38), contained no substantive discussion of the grounds asserted by
 3 attorney Stone as to whether the attorney client relationship deteriorated where Mr. Stone could no
 4 longer represent the company.

5 The court conducted the show cause hearing on September 5, 2014. Mr. Kraft appeared on behalf
 6 of the corporation at the show cause hearing and reiterated his demand that the court vacate its order
 7 allowing attorney Stone to withdraw.² However, Mr. Kraft again failed to address any substantive
 8 response to Mr. Stone's representation that the representation has deteriorated and he could no longer
 9 effectively and adequately represent 24-7.

10 As noted above, Rule 1.16 of the Nevada Rules of Professional Conduct state that a lawyer may
 11 withdraw from representing a client if a client insists upon taking action that the lawyer considers
 12 repugnant or with which the lawyer has fundamental disagreement. Rule 1.16(b)(4). The court advised
 13 Mr. Kraft at the hearing that he and 24-7 had at least one, if not two, opportunities to rebut the assertion
 14 that the Stone/24-7 attorney-client relationship had deteriorated. Instead, Kraft continued to argue that
 15 the purported failure to serve the motion to withdraw upon the company should void the action by the
 16 court. The court disagreed and opined that it would be inappropriate for the court to compel an attorney
 17 to continue representation of an apparently adverse client where the withdrawal would neither cause an
 18 undue delay in the proceedings or prejudice the client. The court denied Plaintiff 24-7's demand to void
 19 motion. (Doc. # 40.)

20 The court extended the time until September 30, 2014, for 24-7 to secure legal representation to
 21 further represent its interests in this matter. The parties were advised of their right to file objections to
 22 the Magistrate Judge's Order in this respect.

23 IT IS SO ORDERED.

24 DATED: September 10, 2014.

25 
 26 WILLIAM G. COBB
 27 UNITED STATES MAGISTRATE JUDGE

28 ² Although Mr. Kraft is not an attorney, the court allowed Mr. Kraft, who represents he is 24-7's "chairman," to
 speak on behalf of the company.